



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/P/150/2015-DD/31/INF/2016-DC/1457/2021]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

[PPR/P/150/2015-DD/31/INF/2016-DC/1457/2021]

In the matter of:

CA. Dolly Mittal (M. No. 410931)

House no. 145

Defence Estate, Phase-1,

Near Bundu Katra,

Agra – 282 001

.....Respondent

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer** (Present in person)
2. **Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee** (Present in person)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Rajendra Kumar P, Member** (Through Video-Conferencing Mode)
5. **CA. Cotha S Srinivas, Member** (Present in person)

DATE OF MEETING : 07.12.2022 (Through Physical/ Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, dated 26th August 2022, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Dolly Mittal (M. No.410931), Agra** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing mode. The Respondent relied on her written submissions dated 3rd November 2022. She submitted that she qualified in Chartered Accountancy in 2007 and that the instant matter pertains to the financial year 2009-10. She mentioned that she was young at the time of certifying/computing the book profits, and the alleged assignment was her first audit assignment. The Respondent further added that it was her first and last mistake, and her whole career would be affected if she is imposed any punishment. The Respondent pleaded before the Committee to take a lenient view while considering her age and experience at the time of her first assignment.

3. The Committee noted that the information in the present case was provided by the Deputy Commissioner of Income Tax, Agra whereby it is informed that the ITAT, vide its order dated 19th August 2019 while dismissing the appeal of M/s Shri Radhey Govind Ice & Cold Storage Pvt Ltd. noted that the record of the assessee (Company) has not been maintained in accordance with the provisions of law. The Committee noted that the Respondent being the auditor of the company, failed to report

CA. Dolly Mittal (M. No.410931), Agra in Re:



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that income by way of long-term capital gains is not taken into account while computing the book profit. The Committee noted that the Respondent not only failed to disclose in her audit report about such known material lapse/ misstatement in Financial Statements but also was grossly negligent in the conduct of her professional duties while the issuance of her audit report for the Company for the Financial Year 2009-2010.

4. The Committee, while looking into the matter and the conduct of the Respondent, is of the opinion that in her audit report, the Respondent never objected to the improper method of accounting adopted by the Company and has never mentioned that the accounts have not been maintained in accordance with the Companies Act. The Committee noted that the practise of revaluation of shares (without routing the same through the Profit and loss account) was done by the Company with a view to avoiding taxes in accordance with the provisions of Section 115JB of the Income Tax Act, 1961.

5. The Committee, while considering the plea taken by the Respondent, opined that she, in her CARO report, mentioned the improper accounting followed by the Company regarding investments and this matter was much of the professional judgement of a Chartered accountant. The Committee looking into the above decided to impose a reasonable punishment on the Respondent, by taking into consideration of her young age at the time of signing the audit report.

6. Therefore, keeping in view the facts and circumstances of the case, the material on record and the submissions of the Respondent before it, the Committee ordered that CA. Dolly Mittal (M. No.410931), Agra be Reprimanded along with a fine of Rs.1,00,000/- (One Lakh Rupees only).

Sd/-
CA. (DR.) DEBASHIS MITRA
PRESIDING OFFICER

Sd/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 16.01.2023
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

Nisha Sharma
निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विहास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PPR/P/150/15-DD/31/INF/16-DC/1457/2021]

In the matter of:

CA. Dolly Mittal (M. NO.410931)

House no. 145

Defence Estate, Phase-1,

Near Bundu Katra,

AGRA- 282 001

..... Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)

CA. Cotha S Srinivas, Member (Present in person)

DATE OF FINAL HEARING : 13.07.2022 (through physical/video conferencing mode)


PARTIES PRESENT :

Respondent : CA. Dolly Mittal (Through Video Conferencing Mode)

Counsel for the Respondent : CA. C.V. Sajan (Through Video Conferencing Mode)

CHARGES IN BRIEF:-

1. The Committee noted that in the present case that the Director Discipline in his Prima-facie Opinion dated 8th December 2018 has held the Respondent Prima-facie Not Guilty of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second schedule to the Chartered Accountants Act, 1949.


Ca. Dolly Mittal (M. No.410931), Agra in Ee:

The matter was accordingly placed before the Board of Discipline at its Meeting held on 12th December 2018, who considered the prima facie opinion dated 8th January, 2018 of the Director (Discipline) alongwith the "Information" letter, Written Statement and additional documents available on record. On consideration of the same, the Board of Discipline in terms of the provisions of Rule 9(3)(b) of the Chartered Accountants(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 directed the Director (Discipline) to further investigate and seek the status of the proceedings in respect of the assessee i.e. M/s Shree Radhe Govind Ice and Storage (P) Ltd for the Assessment Year 2010-11 before the ITAT, Agra along with the copy of the orders passed therein, if any, and thereafter, place his opinion before it for its consideration.

2. The Director (Discipline) on further investigation observed that ITAT vide its order dated 19th August 2019 (D-5 to D-33) has dismissed the appeal of M/s Shri Radhey Govind Ice & Cold Storage Pvt Ltd. on the grounds that the income by way of long term capital gain was not taken into consideration while computing the book profit under section 115JB of the Income Tax Act, 1961 and thereby causing loss to the government exchequer to the tune of Rs. 2.64 crores. Accordingly, the Director Discipline held the Respondent Guilty of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent, as the statutory and tax auditor of the Company for the F.Y. 2009-10, has failed to report that profit on sale of shares viz. capital gains of Rs. 11,35,75,186/- were not included in the book profits of Rs 57,34,049/- to compute the tax liability under section 115JB.

BRIEF FACTS OF THE PROCEEDINGS:

3. On the day of the final hearing held on 13th July 2022, the Committee noted that the Respondent was present along with her Counsel CA. C.V. Sajan from their respective places through Video Conferencing Mode. The Respondent was already on oath as the matter was heard earlier, on 30th September 2021.

Thereafter, the Respondent's Counsel presented his line of defense by presenting the arguments and the Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

4. The Committee noted the Respondent's counsel while explaining the charges, relied upon his written submissions dated 05th August 2021 whereby the Respondent inter-alia had submitted as under:
 - i. The Respondent had mentioned in the CARO report regarding improper accounting followed by the Company regarding investments.
 - ii. As regards the tax audit, there was no specific requirement to report on book profits in Form 3CD.
 - iii. Since the matter was already covered in the CARO report, it was felt that there was no need to bring up the fact in the main report also.
 - iv. This was a matter of professional judgement.
 - v. That Hon'ble ITAT in its order had mentioned that "even the auditor has objected to the maintenance of records and has mentioned that the accounts have not been maintained in accordance with the Companies Act (D-26 and D-27 of prima-facie opinion).
5. The Committee noted that the assessee Company M/s Shri Radhey Govind Ice & Cold Storage Pvt Ltd. was engaged in the business of trading of edible products. The Company during the financial year sold certain shares held by it as investments. The method of accounting with respect to the sale of investments adopted by the Company was that the Company, instead of crediting profit and

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loss earned on account of the sale of shares to profit and loss account, revalued the shares and set off the profit/loss against the revaluation reserve of the shares. The revaluation of shares by the Company was mere a book entry as the profit/loss was never routed through its Profit and Loss Account.

6. The Committee noted that the Respondent in her audit report under para 14 of CARO reporting (page C-15 of Prima-facie opinion) had mentioned as under:

"14. In our opinion and according to the information given to us the Company has maintained proper records of the dealing or trading in shares/ securities, debentures and other investments. The investments are held in the Company's name. It has been observed during the year the investment in quoted shares held by the Company have been revalued at the calculation based on market value and are shown as such in investment and corresponding amount in revaluation reserve. During the year the Quoted Shares have been sold and excess or shortage has been adjusted against Revaluation Reserve."

Further, the Respondent in Notes on Accounts forming part of the Balance Sheet for the Financial Year 2009-10 in relation to the investment accounting (page C-15 of Prima-facie opinion) had disclosed as under:

"(6) The investment in quoted shared held by the Company have been revalued at the valuation based on market value and are shown as such in investments and corresponding amount in revaluation reserve. During the year the Quoted Shares have been sold and excess or shortage has been adjusted against Revaluation Reserve."

- 6.1 The Committee on perusal of reporting by the Respondent in her audit report noted that the Respondent never objected on improper method of accounting adopted by the Company and has never mentioned that the accounts have not been maintained in accordance with the Companies Act. The Committee noted that the practice of revaluation of shares (without routing the same through Profit and loss account) was done by the Company with a view to avoid the taxes to revenue in accordance with the provisions of Section 115JB of The Income Tax Act, 1961.

7. The Committee also noted that the amount of Long Term Capital Gain from such shares was Rs. 11,35,75,186.00 and the same was 86.06% of the total size of the Balance Sheet (Rs. 13,19,68,966.74). Thus, from the above, the Committee observed that the amount involved was highly material and was required to be reported properly.
8. The Committee also noted that ITAT vide its order dated 19th August, 2019 (D-5 to D-33) has dismissed the appeal of M/s Shri Radhey Govind Ice & Cold Storage Pvt Ltd. and had stated that income by way of long term capital gain is required to be taken into account while computing the book profit. Therefore, ITAT was of the opinion that once the record of the assessee (Company) has not been maintained in accordance with the provisions of law, then it is clear violation u/s 211(1) of the Companies Act, where it is the duty of the Company to report the profit and loss of the company and give true and correct picture of affairs of the company. The Committee noted that the Respondent as an auditor not only failed to disclose in her audit report about such known material lapse/ misstatement in Financial Statements but also is grossly negligent in the conduct of her professional duties while issuance of her audit report for the Company for Financial Year 2009-2010.
9. The Committee also noted that the name of the Respondent was also included in Report No. 32 of 2014 (Performance Audit) of the Comptroller and Auditor General of India commenting on the quality of the audit conducted by the specified Chartered Accountants.
10. Therefore, in view of the above, the Committee finds no merits in the arguments of the Respondent with regard to reporting the transactions in CARO rather not qualifying the Audit Report. The Committee further noted that the Regulatory Authorities like ITAT and CAG categorically point out the failure in reporting on the part of the Respondent which resulted in a short levy of tax to the tune of Rs.2.64 crores. The Respondent's defence was based on her professional judgement and her young age at the time of attestation was not tenable as she

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failed to exercise basic diligence and was grossly negligent while performing her duties, which caused loss to the Government exchequer.

CONCLUSION

11. In view of the above findings stated above and the ITAT Order, CAG report as well as oral and written submissions vis-à-vis facts of the case, the Committee decided to hold the Respondent – **CA. Dolly Mittal (M. No.410931), Agra, Guilty** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

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Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 26.08.2022

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित/
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मीनू गुप्ता / Meenu Gupta
कार्यकारी अधिकारी / Executive Officer
अनुशासननात्मक निदेशालय / Disciplinary Directorate
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